Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Concluding observations on the combined fourth and fifth periodic reports of Namibia*

1. The Committee considered the combined fourth and fifth periodic reports of Namibia (CEDAW/C/NAM/4-5) at its 1321st and 1322nd meetings, on 16 July 2015 (see CEDAW/C/SR.1321 and 1322). The Committee's list of issues and questions is contained in CEDAW/C/NAM/Q/4-5 and the responses of Namibia are contained in CEDAW/C/NAM/Q/4-5/Add.1.

A. Introduction

2. The Committee appreciates that the State party submitted its combined fourth and fifth periodic reports. It also appreciates the State party's written replies to the list of issues and questions raised by the pre-sessional working group and welcomes the oral presentation of the delegation and the further clarifications provided in response to the questions posed orally by the Committee during the dialogue.

3. The Committee commends the State party on its delegation, which was headed by the Minister of Gender Equality and Child Welfare, Doreen Sioka, and included representatives of the Ministry of Health and Social Services, the Ministry of Education, Arts and Culture, the Ministry of International Relations and Cooperation and the Permanent Mission of Namibia to the United Nations Office and other international organizations in Geneva.

B. Positive aspects

4. The Committee welcomes the progress achieved since the ratification of the Convention, in particular the adoption of the following legislation:

(a) Child Care and Protection Act, in 2015, which contains provisions on the trafficking of children, including girls, and the minimum age of marriage;

* Adopted by the Committee at its sixty-first session (6-24 July 2015).

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(b) Prevention of Organized Crime Act, in 2004 (entered into force in May 2009), which has been used to combat trafficking in human beings, including women and girls.

5. The Committee welcomes the State party's efforts to improve its institutional and policy framework aimed at accelerating the elimination of discrimination against women and promoting gender equality, such as the adoption of the following:

(a) National Gender Policy (2010-2020);

(b) National Gender Plan of Action (2010-2020);

(c) Gender-responsive budgeting guidelines, approved by the Cabinet in 2014;

(d) Education and Training Sector Improvement Programme (2006-2020), which are intended to enhance education from early childhood development to lifelong training.

6. The Committee welcomes the State party's accession to the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto in 2007.

C. Principal areas of concern and recommendations

Parliament

7. **The Committee stresses the crucial role of the legislative power in ensuring the full implementation of the Convention (see the statement by the Committee on its relationship with parliamentarians, adopted at the forty-fifth session, in 2010). It invites Parliament, in line with its mandate, to take the necessary steps regarding the implementation of the present concluding observations between now and the next reporting period under the Convention.**

Visibility of the Convention, the Optional Protocol and the Committee's general recommendations

8. The Committee recalls its previous concluding observations (CEDAW/C/NAM/CO/3, para. 12) and reiterates its concern that the provisions of the Convention, the Optional Protocol and the Committee's general recommendations are not sufficiently known in the State party, including by judges, lawyers and prosecutors, and that there has only been one case in which the provisions of the Convention have been referred to by national courts.

9. **The Committee recommends that the State party:**

(a) **Intensify efforts to disseminate information about the Convention, the procedures under the Optional Protocol and the Committee's general recommendations, as well as to conduct capacity-building programmes for judges, prosecutors and lawyers that cover all relevant aspects of the Convention and the Optional Protocol;**

(b) **Consider adopting a national action plan on the implementation for the present concluding observations, with clear targets and indicators.**

Definition of discrimination and legislative framework

10. The Committee notes that article 10 of the Constitution provides that all persons are equal before the law and prohibits sex-based discrimination. The Committee is concerned, however, that the article provides a closed list of prohibited grounds, which does not encompass discrimination based on marital and HIV status. The Committee also notes with concern that a number of bills that have an impact on the enjoyment of women's rights, such as those on marriage, recognition of customary marriages, procurement, marital property, divorce and intestate succession, are pending and there is no specific time frame for their adoption.

11. **The Committee calls upon the State party:**

(a) **To adopt a comprehensive legal definition of discrimination in line with article 1 of the Convention, covering all prohibited grounds of discrimination, including marital and other status, either by amending article 10 of the Constitution or by adopting other appropriate legislation;**

(b) **To urgently adopt pending bills, such as those on marriage, recognition of customary marriages, procurement, marital property, divorce and intestate succession.**

Legal status of the Convention and harmonization of laws

12. The Committee notes that the State party has a pluralistic legal system in which customary and statutory law are both applicable and that section 66 (1) of the Constitution provides that customary law is valid only to the extent to which it does not conflict with the Constitution or any other statutory law. The Committee is concerned, however, that some elements of customary law are not in compliance with the Convention.

13. **The Committee recommends that the State party ensure that the Ministry of Gender Equality and Child Welfare, in conjunction with the Law Reform and Development Commission, conduct a thorough gender analysis of all laws in the State party in order to identify all customary laws that are in conflict with the Convention so as to harmonize them with statutory laws and the Convention.**

Access to justice and legal complaint mechanisms

14. The Committee notes that the Legal Aid Act (No. 29 of 1990), as amended by Act No. 17 of 2000, provides for a legal aid scheme in the State party. The Committee is concerned, however, that, notwithstanding the existence of a legal aid scheme, which is based on a means and merit test, women's access to justice, in particular in civil cases, including divorce, and in cases of gender-based violence, continues to be limited owing in part to reported cuts to the legal aid fund.

15. **The Committee recommends that the State party ensure that adequate funding is provided to the legal aid fund and that women, in particular women pursuing divorce and gender-based violence cases, have effective access to justice in all parts of the State party.**

Temporary special measures

16. The Committee recalls its previous concluding observations (CEDAW/C/NAM/CO/3, para. 14) and reiterates its concern that, notwithstanding the existence of the

Affirmative Action (Employment) Act (No. 29 of 1998) and the general provisions on affirmative action under article 23 of the Constitution, temporary special measures are not consistently applied across the various areas covered by the Convention, such as the participation of women in public life, education and employment, in order to accelerate the achievement of substantive equality of women and men.

17. **The Committee calls upon the State party to adopt and fully enforce legislative provisions on temporary special measures to increase the participation of women in public life, education and employment, in accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25 on temporary special measures, as a necessary strategy to accelerate the achievement of substantive equality of women and men in all areas of the Convention in which women are underrepresented or disadvantaged.**

Stereotypes and harmful practices

18. The Committee is concerned at the persistence of harmful practices, as well as discriminatory stereotypes and deep-rooted patriarchal attitudes regarding the roles and responsibilities of women and men in the family and in society. The Committee is particularly concerned at the lack of data on the extent of harmful practices such as widow inheritance, sexual initiation practices and polygamy. The Committee recalls its previous concluding observations (CEDAW/C/NAM/CO/3, paras. 16 and 17) and notes that the State party has not yet conducted a study on the extent of and prevalence of traditional harmful practices and on the impact of the implementation of the Traditional Authorities Act (No. 25 of 2000) and the Community Courts Act of 2003, so as to ensure that customs and practices that are harmful to women are discontinued.

19. **The Committee urges the State party:**

(a) **To expand public education programmes on the negative impact of discriminatory stereotypes on women's enjoyment of their rights, in particular in rural areas, targeting traditional leaders who are the custodians of customary values in the State party;**

(b) **To cooperate with the media to educate the general public and raise awareness about existing sex-based stereotypes that persist at all levels of society, with a view to eliminating them;**

(c) **To conduct national studies with a view to establishing the extent of and prevalence of the problem of harmful practices, such as widow inheritance, sexual initiation practices and polygamy, and the impact of the implementation of the Traditional Authorities Act (No. 25 of 2000) and the Community Courts Act of 2003 on the enjoyment of women's rights;**

(d) **To regularly monitor and review the measures taken to eliminate gender stereotypes and harmful practices so as to assess their impact with a view to introducing specific measures aimed at eliminating them.**

Violence against women

20. The Committee notes the State party's legislative and policy measures to combat violence against women, such as the enforcement of the Combating of Domestic Violence Act (No. 4 of 2003) and the adoption of the National Plan of Action on Gender-based Violence (2012-2016). The Committee is concerned, however, at the high prevalence of violence against women and girls, such as rape

and murder, committed by intimate partners. The Committee is also concerned at the low rate of prosecution of perpetrators of violence against women and the frequent withdrawal of cases by women who are victims of violence. It is further concerned that, notwithstanding the State party's efforts to establish shelters in the State party, they remain inadequate.

21. **Recalling its general recommendation No. 19 on violence against women, the Committee urges the State party:**

(a) **To ensure that all cases of violence against women and girls are thoroughly and effectively investigated and that perpetrators are prosecuted ex officio and adequately punished;**

(b) **To identify the root causes for the withdrawal of complaints about violence against women by victims and introduce effective measures to address them;**

(c) **To expedite the development of the proposed national gender statistical system, which will have indicators and targets for all national programmes on gender, and ensure that the national database on gender-based violence has up-to-date statistical data on cases focusing on all forms of violence against women, including domestic violence, which should be disaggregated by age, type of offence and the relationship between the perpetrators and the victim;**

(d) **To undertake a needs assessment to establish the demand for shelters by women who are victims of violence, considering the magnitude of the problem of violence against women in the State party, and ensure that adequate shelters are accessible to women and girls who are victims of violence in all parts of the State party and that all shelters are sufficiently resourced.**

22. The Committee commends the State party for establishing a high-level strategic interministerial committee on domestic violence and violence in general in 2008, but is concerned that most of the proposals made by the Cabinet at a special meeting held on 20 February 2014, such as introducing a witness protection programme for gender-based violence cases, have not been implemented. The Committee is also concerned that the Correctional Service Act (No. 9 of 2012), the Criminal Procedure Act (sects. 60-62) and the Combating of Rape Act (No. 8 of 2000) (sect. 3), which have a bearing on efforts to curb violence against women in the State party, have not been amended to remove legal impediments to efforts to combat violence against women, as observed by the Cabinet.

23. **The Committee recommends that the State party urgently implement the proposals adopted by the Cabinet on 20 February 2014, including:**

(a) **Introducing a comprehensive witness protection programme with the aim of protecting witnesses who testify against persons accused of violence against women, including domestic violence;**

(b) **Amending the Correctional Service Act (No. 9 of 2012), the Criminal Procedure Act (sects. 60-62) and the Combating of Rape Act (No. 8 of 2000) (sect. 3) to remove all legal impediments to efforts to combat violence against women.**

Trafficking and exploitation of prostitution

24. The Committee welcomes the adoption of the Child Care and Protection Act of 2015, which contains a chapter on combating trafficking in children; the inclusion of human trafficking among the 12 areas of focus in the revised National Gender Policy; and the use of the Prevention of Organized Crime Act of 2004 to combat trafficking in human beings as well as in the first criminal conviction in 2015 involving a case of human trafficking. The Committee is concerned, however, that the State party remains a source and destination country for trafficking in human beings, in particular women and girls, mainly for purposes of forced labour and sexual exploitation. The Committee is also concerned at the lack of up-to-date data on the extent of trafficking in women and girls since the State party conducted a national baseline study on trafficking in human beings in 2009.

25. **The Committee recommends that the State party:**

(a) **Develop and enact comprehensive anti-trafficking legislation in line with international norms and standards;**

(b) **Undertake a comprehensive study to collect data on the extent and forms of trafficking in women and girls, which should be disaggregated by age and region or country of origin;**

(c) **Intensify efforts to address the root causes of trafficking in women and girls and to ensure the rehabilitation and social integration of victims, including by providing them with access to shelters and legal, medical and psychosocial assistance;**

(d) **Intensify awareness-raising efforts aimed at promoting the reporting of trafficking offences and the early detection of women and girls who are victims of trafficking, as well as their referral to appropriate services;**

(e) **Intensify efforts aimed at bilateral, regional and international cooperation to prevent trafficking, including by exchanging information and harmonizing legal procedures to prosecute traffickers, in particular with neighbouring States such as Angola, Botswana, South Africa and Zambia and other relevant States in the Southern African Development Community;**

(f) **Allocate adequate resources for the effective operation of shelters in the State party.**

Participation in political and public life

26. The Committee commends the State party for its achievements in attaining 47 per cent representation of women in Parliament during the presidential and parliamentary elections held in 2014. The Committee is concerned, however, that those achievements were based on voluntary commitments of political parties to increase the participation of women in politics and that proposals to amend the electoral law, with the aim of having more prescriptive measures to accelerate the participation of women in political life, were rejected. The Committee is particularly concerned at the low representation of women in the judiciary, ministerial positions and senior positions in the diplomatic service, and at the regional and local levels of government.

27. **The Committee recommends that the State party introduce temporary special measures, in accordance with article 4 (1) of the Convention and the**

Committee's general recommendation No. 25 and general recommendation No. 23 on women in political and public life, such as a gender parity system for appointments and accelerated recruitment of women in senior positions, in order to accelerate the full and equal participation of women in elected and appointed bodies, including the judiciary, ministerial positions and senior positions in the diplomatic service, and at the regional and local levels of government. Furthermore, the State party should consider revising its electoral law by adopting more prescriptive temporary special measures so as to secure the gains achieved in the representation of women in Parliament.

Nationality

28. The Committee commends the State party for its efforts in ensuring the registration of children upon birth since the launch of a pilot project on birth registration in 2009. The Committee notes that birth registration by mothers in their maiden names when the father of the child is absent is a culturally sensitive matter in the State party, but is concerned that the requirement that both parents be present during birth registration is an obstacle to the timely registration of children in cases in which one of the parents, usually the male parent, is absent.

29. **The Committee recommends that the State party:**

(a) **Intensify its efforts and provide mechanisms to ensure timely birth registration in all parts of the State party;**

(b) **Consider revising its policy on birth registration by permitting the registration of a child on the application of a single parent and prescribing a period during which the absent parent can challenge the registration of the child and pursue deregistration, where appropriate.**

Education

30. The Committee welcomes the revision of the Teenage Pregnancy Policy of 2009 on the prevention and management of pregnancy and the provision of life skills as a subject in schools which, among other things, is focused on the dangers and effects of teenage pregnancy. The Committee is concerned, however, at the high rates of pregnancy that result in girls dropping out of school, in particular in the Kavango and Kunene regions. It is also concerned that girls routinely avoid engineering courses. The Committee is further concerned about the lack of appropriate measures to enforce the law that prohibits corporal punishment and prevent its use in all settings, especially schools.

31. **The Committee recommends that the State party:**

(a) **Encourage girls and young women to choose non-traditional fields of study and professions, including through the adoption of temporary special measures, and implement programmes aimed at counselling girls on the full range of educational choices;**

(b) **Intensify efforts to reduce the number of girls dropping out of school by facilitating the re-entry into school of young mothers after giving birth, in particular in the Kavango and Kunene regions;**

(c) **Intensify the provision of life skills education and ensure that age-appropriate education in sexual and reproductive health and rights is**

systematically integrated into school curricula, including comprehensive sex education for adolescent girls and boys covering responsible sexual behaviour;

(d) **Intensify law enforcement efforts to curb corporal punishment with a view to eliminating its use in all settings, especially schools, and promote the use of non-violent forms of discipline.**

Employment

32. The Committee is concerned about the high rates of unemployment among women in the State party. It also notes with concern the continued occupational segregation between women and men in the labour market and the low representation of women in managerial positions in the private sector. The Committee is also concerned that, notwithstanding the concentration of women in domestic work in private households, it has not ratified the Domestic Workers Convention, 2011 (No. 189), of the International Labour Organization. It is further concerned at the lack of statistical data on cases of sexual harassment in the workplace and measures taken to address it. In addition, the Committee is concerned that the right to maternity leave for a period of 12 weeks is applicable only to certain groups of employees in the formal sector.

33. **The Committee recommends that the State party:**

(a) **Intensify efforts to reduce unemployment among women by promoting the entry of women into the formal economy through, among other things, the provision of vocational and technical training;**

(b) **Strengthen efforts aimed at eliminating structural inequalities and occupational segregation, both horizontal and vertical, in addition to improving the representation of women in managerial positions in the private sector;**

(c) **Consider ratifying the Domestic Workers Convention, 2011 (No. 189), of the International Labour Organization;**

(d) **Take the steps necessary to ensure that the period of 12 weeks of maternity leave is applicable to employees in the informal sector and consider reviewing the period with a view to extending it;**

(e) **Gather statistical data on the extent of the problem of sex discrimination in the workplace, including cases of sexual harassment, and conduct regular labour inspections aimed at enforcing compliance with labour laws and codes of conduct on sexual harassment.**

Health

34. The Committee recalls its previous concluding observations (CEDAW/C/NAM/CO/3, paras. 24 and 25) and commends the State party for its successful programmes aimed at preventing mother-to-child transmission of HIV. The Committee remains concerned, however, at the high prevalence of HIV/AIDS and unsafe abortions, which have contributed to the increase in the maternal mortality ratio in the State party. The Committee is particularly concerned that, while abortion is permissible on prescribed grounds such as rape, incest, threat to the health and life of the pregnant woman and foetal malformation, pursuant to the Abortion and Sterilization Act of 1975, women still undergo complex and onerous administrative procedures to obtain approval for abortion.

35. **The Committee calls upon the State party:**

(a) **To implement strategies to combat HIV/AIDS, in particular preventive strategies, and to scale up the provision of free antiretroviral treatment to all women and men living with HIV, including pregnant women, so as to prevent mother-to-child transmission;**

(b) **To step up efforts to reduce the incidence of maternal mortality, including through the provision of safe abortion and post-abortion care services by simplifying the existing complex and onerous administrative procedures that impede women's access to abortion services.**

36. The Committee welcomes the decisions of the High Court and the Supreme Court of Namibia in the case of *Government of Namibia v. LM and Others*, in which the High Court found that three HIV-positive women had been sterilized without their informed consent in violation of their rights under Namibian law. The Committee is concerned, however, at the lack of information on the extent of the problem of forced sterilizations of HIV-positive women. It is also concerned at the lack of information on the specific legislative and policy measures taken with regard to sterilization, including the lack of a clear definition of free, prior and informed consent in cases of sterilization in order to guide women and medical practitioners in the State party on the procedure.

37. **Recalling its general recommendation No. 24 on women and health, the Committee urges the State party:**

(a) **To adopt legislative and policy measures that clearly define the requirement of free, prior and informed consent with regard to sterilizations, in accordance with relevant international standards, including by prescribing an appropriate reflection period after a woman has been informed about the nature of the sterilization, its permanent consequences, potential risks and available alternatives, and the woman's expression of her free, prior and informed consent to undergo the procedure;**

(b) **To conduct a study on the extent of the problem of forced sterilizations of HIV-positive women and adopt specific measures aimed at providing all victims of forced sterilizations with assistance to access their medical records; and investigate illegal past practices of forced sterilizations, prosecute and adequately punish perpetrators and compensate the victims.**

Rural women

38. The Committee notes the State party's efforts towards poverty eradication in rural areas, including increasing the old age pension for persons aged 60 and above. It is concerned, however, at women's limited access to land and the lack of information on rural women's access to microfinance and microcredit schemes. The Committee is particularly concerned at reports of land grabbing by relatives of deceased spouses and the impact on women in rural areas.

39. **The Committee calls upon the State party:**

(a) **To adopt specific measures aimed at facilitating women's access to land, in particular in rural areas;**

(b) **To collect information on and promote rural women's access to microfinance and microcredit at low interest rates and intensify efforts aimed at ensuring that rural women engage in income-generating activities;**

(c) **To intensify efforts aimed at curbing land grabbing, especially as regards women in rural areas, which affects the full enjoyment of the right to property by women.**

Marriage and family relations

40. The Committee notes the State party's efforts to regulate customary marriages by developing a bill on the recognition of customary marriages and to introduce the no-fault divorce regime under the proposed divorce bill. The Committee nevertheless notes that the Flexible Land Tenure Act of 2012, which addresses in part the joint ownership of marital property, is applicable only to persons who are married in community of property. It also notes that women in de facto unions regularly face economic hardship upon the dissolution of their relationships.

41. **The Committee recalls its general recommendation No. 29 on article 16 of the Convention (economic consequences of marriage, family relations and their dissolution) and calls upon the State party to protect the rights of women in de facto unions and ensure the equal distribution of marital property upon dissolution of marriage.**

Optional Protocol and amendment to article 20 (1) of the Convention

42. **The Committee encourages the State party to ratify the Optional Protocol to the Convention and to accept, as soon as possible, the amendment to article 20 (1) of the Convention concerning the meeting time of the Committee.**

Beijing Declaration and Platform for Action

43. **The Committee calls upon the State party to use the Beijing Declaration and Platform for Action in its efforts to implement the provisions of the Convention.**

Millennium Development Goals and the post-2015 development framework

44. **The Committee calls for the integration of a gender perspective, in accordance with the provisions of the Convention, into all efforts aimed at the achievement of the Millennium Development Goals and into the post-2015 development framework.**

Dissemination

45. **The Committee recalls the obligation of the State party to systematically and continuously implement the provisions of the Convention. It urges the State party to give priority attention to the implementation of the present concluding observations and recommendations between now and the submission of the next periodic report. The Committee therefore requests that the present concluding observations be disseminated in a timely manner, in the official language of the State party, to the relevant State institutions at all levels (national, regional and local), in particular to the Government, the ministries, Parliament, the Senate and the judiciary, to enable their full implementation. It encourages the State party to collaborate with all stakeholders concerned, such as employers'**

associations, trade unions, human rights and women's organizations, universities, research institutions and the media. It recommends that the present concluding observations be disseminated in an appropriate form at the local community level to enable their implementation. In addition, the Committee requests the State party to continue to disseminate the Convention, the Optional Protocol thereto and relevant jurisprudence, in addition to the Committee's general recommendations, to all stakeholders.

Technical assistance

46. **The Committee recommends that the State party consider seeking international assistance and avail itself of technical assistance in the development and implementation of a comprehensive programme aimed at the implementation of the recommendations above and the Convention as a whole. The Committee also calls upon the State party to continue its cooperation with the specialized agencies and the programmes of the United Nations system.**

Ratification of other treaties

47. **The Committee notes that the adherence of the State party to the nine major international human rights instruments[1] would enhance the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. The Committee therefore encourages the State party to consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, to which it is not yet a party.**

Follow-up to the concluding observations

48. **The Committee requests the State party to provide, within two years, written information on the steps taken to implement the recommendations contained in paragraphs 11 and 15 above.**

Preparation of the next report

49. **The Committee invites the State party to submit its sixth periodic report in July 2019.**

50. **The Committee requests the State party to follow the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (HRI/GEN/2/Rev.6, chap. I).**

[1] The International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities.